

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

DOUGLAS WINSTON, <i>et al.</i> ,)	CASE NO. 1:14CV02670
)	
Plaintiffs,)	JUDGE SOLOMON OLIVER, JR.
)	
vs.)	<u>SEPARATE ANSWER OF</u>
)	<u>DEFENDANTS LOEHMANN AND</u>
CITY OF CLEVELAND, <i>et al.</i> ,)	<u>GARMBACK TO PLAINTIFFS'</u>
)	<u>AMENDED COMPLAINT</u>
Defendants.)	
)	[A Jury Demand Is Endorsed Hereon]

Now come the Defendants Timothy Loehmann and Frank Garmback, by and through counsel, and for their Separate Answer, state as follows:

In response to the allegations contained in Paragraphs 1-205 of Plaintiffs' Amended Complaint, Defendants Loehmann and Garmback hereby invoke their Fifth Amendment Privilege against compulsory self-incrimination in lieu of answering the same and, pursuant to the decision in *Rogers v. Webster* (6th Cir. 1984), 776 F.2d 607, respectfully request that this Court treat Defendants Loehmann and Garmback's claim of privilege as the equivalent of a specific denial and put Plaintiffs to their proof of the matter asserted.

AFFIRMATIVE DEFENSES

Without waiving any rights pursuant to the above Answer, the invoking of their

Fifth Amendment Privilege against compulsory self-incrimination and the decision in *Rogers v. Webster* (6th Cir. 1984), 776 F.2d 607, the following Affirmative Defenses are asserted on behalf of Defendants Loehmann and Garmback:

1. Plaintiffs' Amended Complaint, in whole or in part fails to state a claim upon which relief may be granted against these Defendants.
2. Some or all of the Plaintiffs lack standing to bring these causes of action.
3. Plaintiffs have failed to join all necessary and indispensable parties.
4. All immunities and other provisions contained in Ohio Revised Code Chapter 2744 are asserted by Defendants in response to Plaintiffs' claims.
5. All full and qualified immunities available under federal law or state law, statutory or common law are asserted by Defendants in response to Plaintiffs' claims.
6. Defendants believe the evidence will establish that the intervening and/or superseding acts of others, including but not limited to the individual who modified the pellet gun possessed by Tamir Rice, proximately caused or contributed to Plaintiffs' damages.
7. Defendants assert the affirmative defenses of primary, express, and/or implied assumption of the risk to the extent applicable under Ohio law.
8. Defendants assert the affirmative defenses of contributory and/or comparative negligence to the extent applicable under Ohio law.
9. Plaintiffs' damages were not the proximate result of an unconstitutional policy, practice, custom, or the deliberate indifference of this Defendant.

10. Defendants did not violate any of Plaintiffs' decedent's federal rights and, therefore, Defendants are entitled to judgment as to Plaintiffs' federal law claims.

11. Defendants are not subject to punitive damages.

12. Defendants reserve the right to file a Amended Answer and assert additional defenses as may be revealed through discovery.

WHEREFORE, having fully answered, Defendants Loehmann and Garmback respectfully request that Plaintiffs' Amended Complaint be dismissed at Plaintiffs' cost and grant any other relief the Court may deem just.

Respectfully submitted,

/s/ Ernest L. Wilkerson, Jr.

Ernest L. Wilkerson, Jr. (#0036972)

Kathryn M. Miley (#0067084)

Wilkerson & Associates Co., LPA

1422 Euclid Ave, Suite 248

Cleveland, OH 44115

(216) 696-0808

(888) 502-9720 facsimile

ewilkerson@wilkersonlpa.com

kmmiley@wilkersonlpa.com

Attorneys for Defendants Loehmann
and Garmback

JURY DEMAND

Defendants Loehmann and Garmback respectfully request a jury trial.

/s/ Ernest L. Wilkerson, Jr.

Ernest L. Wilkerson, Jr.

Kathryn M. Miley

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 2015, a copy of the foregoing Answer was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Ernest L. Wilkerson, Jr.
Ernest L. Wilkerson, Jr.
Kathryn M. Miley
Attorneys for Defendants Loehmann
and Garmback

City/Winston/answer